

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO – Cincinnati Division

THE KROGER CO.

Plaintiff,

vs.

THE FEDERAL TRADE COMMISSION

Defendant,

and

LINA M. KHAN, REBECCA KELLY
SLAUGHTER, ALVARO BEDOYA, MELISSA
HOLYOAK, and ANDREW N. FERGUSON, in
their official capacities as Commissioners of the
Federal Trade Commission

Defendants.

Civil Action No. 1:24-cv-00438-DRC

KROGER’S NOTICE OF SUPPLEMENTAL AUTHORITY

Pursuant to the direction of the Court at the hearing on October 28, 2024, Kroger submits this chart indicating the disposition of each Part 3 proceeding initiated in the last 30 years seeking to enjoin a merger, in which the FTC sought but failed to obtain an injunction of the merger in federal court. The chart represents a good-faith effort by Kroger to represent all such cases; any omissions are inadvertent.

FTC Case Name / Number	Federal Court Disposition	Part 3 Disposition
<i>In re Microsoft Corp.</i> , No. 9412 (F.T.C.)	Injunction denied, <i>see FTC v. Microsoft Corp.</i> , 681 F. Supp. 3d 1069 (N.D. Cal. 2023), <i>appeal pending</i> , No. 23-15992 (9th Cir.).	Part 3 evidentiary proceeding to commence 21 days after resolution of appeal
<i>In re Meta Platforms, Inc.</i> , No. 9411 (F.T.C.)	Injunction denied, <i>see FTC v. Meta Platforms Inc.</i> , 654 F. Supp. 3d 892 (N.D. 2023)	Part 3 proceeding dismissed February 24, 2023
<i>In re Thomas Jefferson University</i> , No. 9392 (F.T.C.)	Injunction denied, <i>see FTC v. Thomas Jefferson Univ.</i> , 505 F. Supp. 3d 522 (E.D. Pa. 2020)	Part 3 proceeding dismissed March 15, 2021
<i>In re RAG-Stiftung</i> , No. 9384 (F.T.C.)	Injunction denied, <i>see FTC v. RAG-Stiftung</i> , 436 F. Supp. 3d 278 (D.D.C. 2020)	Part 3 proceeding dismissed April 29, 2020
<i>In re Steris Corp.</i> , No. 9365 (F.T.C.)	Injunction denied, <i>see FTC v. Steris Corp.</i> , 133 F. Supp. 3d 962 (N.D. Ohio 2015)	Part 3 proceeding dismissed October 30, 2015
<i>In re Laboratory Corp. of America</i> , No. 9345 (F.T.C.)	Injunction denied, <i>see FTC v. Lab'y Corp. of Am.</i> , 2011 WL 3100372 (C.D. Cal. Mar. 11, 2011)	Part 3 proceeding dismissed April 22, 2011
<i>In re Whole Foods Mkt., Inc.</i> , No. 9324 (F.T.C.)	Injunction denied, <i>see FTC v. Whole Foods Mkt., Inc.</i> , 502 F. Supp. 2d 1 (D.D.C. 2007), <i>rev'd and remanded</i> , 548 F.3d 1028 (D.C. Cir. 2008)	Consent order entered March 6, 2009
<i>In re Paul L. Foster</i> , No. 9323 (F.T.C.)	Injunction denied, <i>see FTC v. Foster</i> , 2007 WL 1793441 (D.N.M. May 29, 2007)	Part 3 proceeding dismissed October 3, 2007
<i>In re Arch Coal, Inc.</i> , No. 9316 (F.T.C.)	Injunction denied, <i>see FTC v. Arch Coal, Inc.</i> , 329 F. Supp. 2d 109 (D.D.C. 2004)	Part 3 proceeding dismissed June 13, 2005
<i>In re Tenet Healthcare Corp.</i> , No. 9289 (F.T.C.)	Injunction granted, <i>see FTC v. Tenet Health Care Corp.</i> , 17 F. Supp. 2d 937 (E.D. Mo. 1998), <i>rev'd</i> , 186 F.3d 1045 (8th Cir. 1999)	Part 3 proceeding dismissed December 28, 1999

FTC Case Name / Number	Federal Court Disposition	Part 3 Disposition
<i>In re Butterworth Health Corp.</i> , No. 9283 (F.T.C.)	Injunction denied, <i>FTC v. Butterworth Health Corp.</i> , 946 F. Supp. 1285 (W.D. Mich. 1996), <i>aff'd</i> , 121 F.3d 708 (6th Cir. 1997)	Part 3 proceeding dismissed September 26, 1997
<i>In re Freeman Hospital</i> , No. 9273 (F.T.C.)	Injunction denied, <i>FTC v. Freeman Hosp.</i> , 911 F. Supp. 1213 (W.D. Mo.), <i>aff'd</i> , 69 F.3d 260 (9th Cir. 1995)	Part 3 proceeding dismissed November 30, 1995

Date: November 1, 2024

Respectfully submitted,

Nathaniel Lampley, Jr. (0041543)
 Petra G. Bergman (0097990)
 VORYS, SATER, SEYMOUR AND PEASE LLP
 301 East Fourth Street, Suite 3500,
 Cincinnati, Ohio 45202
 (513) 723-4000
 nlampley@vorys.com
 pgbergman@vorys.com

/s/ Mark A. Perry

Mark A. Perry (*pro hac vice*)
 Joshua M. Wesneski (*pro hac vice*)
 WEIL, GOTSHAL & MANGES LLP
 2001 M Street NW, Suite 600
 Washington, DC 20036
 (202) 682-7248

Daniel M. Lifton (*pro hac vice*)
 WEIL, GOTSHAL & MANGES LLP
 767 Fifth Avenue
 New York, NY 10153
 (212) 310-8000

Attorneys for Plaintiff The Kroger Co.